

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

In the Matter of

*À La Carte* and Themed Tier Programming and  
Pricing Options for Programming Distribution  
on Cable Television and Direct Broadcast  
Satellite Systems

MB Docket No. 04-207

To: The Commission

**COMMENTS OF SCRIPPS NETWORKS, INC.**

*Of Counsel:*

Robert J. Gerrard, Jr.  
Erik Hestnes  
David JB Arroyo  
**SCRIPPS NETWORKS, INC.**  
1180 Avenue of the Americas  
New York, New York 10036  
(212) 549-8581

Burt A. Braverman  
James W. Tomlinson  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
1919 Pennsylvania Avenue, N.W. - Suite 200  
Washington, D.C. 20006  
(202) 659-9750

Jeremy H. Stern  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
2381 Rosecrans Avenue - Suite 110  
El Segundo, CA 90245  
(310) 643-7999

July 15, 2004

*Attorneys for  
Scripps Networks, Inc.*

## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION AND SUMMARY.....</b>	<b>1</b>
<b>II.</b>	<b>SCRIPPS NETWORKS PRODUCES DIVERSE PROGRAMMING .....</b>	<b>5</b>
<b>A.</b>	<b>Diverse Programming Is In the Public Interest .....</b>	<b>5</b>
<b>B.</b>	<b>Scripps Networks Offers High Quality, Diverse Programming .....</b>	<b>8</b>
<b>1.</b>	<b>Overview Of The E.W. Scripps Company.....</b>	<b>8</b>
<b>2.</b>	<b>Scripps Networks .....</b>	<b>8</b>
<b>3.</b>	<b>Investment in New Products, Services, and Networks .....</b>	<b>10</b>
<b>III.</b>	<b>DISTRIBUTION IS THE KEY TO THE SATELLITE PROGRAMMING</b>	
	<b>NETWORK ECONOMIC MODEL .....</b>	<b>11</b>
<b>A.</b>	<b>The Economics Of Satellite Program Networks .....</b>	<b>11</b>
<b>1.</b>	<b>The Dual Revenue Stream: Advertising And License Fees .....</b>	<b>12</b>
<b>2.</b>	<b>Advertising Revenue Is Critical.....</b>	<b>13</b>
<b>3.</b>	<b>License Fee Revenues As A Second Source of Income .....</b>	<b>14</b>
<b>B.</b>	<b>Scripps Networks' Current Business Operations .....</b>	<b>14</b>
<b>IV.</b>	<b>GOVERNMENT INTERVENTION WOULD HARM NETWORKS AND</b>	
	<b>CONSUMERS .....</b>	<b>16</b>
<b>A.</b>	<b><i>Á La Carte</i> Would Hurt The Industry.....</b>	<b>16</b>
<b>B.</b>	<b><i>Á La Carte</i> Would Hurt Consumers.....</b>	<b>19</b>
<b>C.</b>	<b><i>Á La Carte</i> Model Would Eliminate Program Diversity .....</b>	<b>21</b>
<b>V.</b>	<b>CONCLUSION .....</b>	<b>22</b>

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Á La Carte and Themed Tier Programming and  
Pricing Options for Programming Distribution  
on Cable Television and Direct Broadcast  
Satellite Systems

MB Docket No. 04-207

**COMMENTS OF SCRIPPS NETWORKS, INC.**

Scripps Networks, Inc. (“Scripps Networks”), a part of The E.W. Scripps Company (“E.W. Scripps”), submits these comments in response to the Commission’s Public Notice released May 25, 2004 (“Á La Carte Notice”) in the captioned proceeding, which requested information “regarding the provision of *á la carte* and ‘themed-tier’ services on cable television and direct broadcast satellite systems.”

**I. INTRODUCTION AND SUMMARY**

Fundamental to our nation’s notion of a free and open democracy is the principle that the First Amendment encourages a diversity of voices, opinions, ideas, and expressed beliefs. As a result, communications law and policy since the enactment of the Communications Act of 1934 have sought to encourage diversity in electronic entertainment and news media, especially in satellite cable network programming.

Indeed, there probably is no better model of this diversity than in the programming line-ups of Multichannel Video Program Distributors (“MVPDs”). Since the launch of satellite cable program networks more than twenty-five years ago, consumers increasingly have had the opportunity to view an enormous range of

programming – programming that *never* would have been produced in a broadcast network environment that caters to the lowest common denominator of a mass audience.

Scripps Networks has contributed significantly to the broadening of cable television choices. Over the last ten years, Scripps Networks has created four popular networks – Home and Garden Television (“HGTV”), Food Network<sup>1</sup>, Do-It-Yourself Network (“DIY”), and Fine Living Network (“Fine Living”) – that provide original lifestyle programming to a previously unserved audience.

Scripps Networks achieved its success by executing on a business model that is both straightforward and standard in the satellite program network industry.<sup>2</sup> According to this model, niche programming networks – which could not survive on their own if distributed on an *à la carte* basis – do in fact thrive in an environment in which many such networks are distributed together as part of broad tiers of programming services. These broad tiers afford consumers the ability to view networks with which they have become familiar, but also to sample, through “channel surfing,” new networks to which they otherwise would not have been exposed.

For a network to succeed under this model, it must obtain carriage, to the greatest extent possible, on the most widely distributed tiers offered by MVPDs, and create original programming to drive demand within their niche. This eventually will lead to a dual revenue stream from both license fees paid by MVPDs and advertising revenues from the sale of national advertising time. With this dual revenue stream, a successful satellite program network can not only fund its operations but also increase its distribution, drive increases in viewership (and hence increase advertising revenues), and

---

<sup>1</sup> Food Network launched in 1993 and Scripps Networks acquired it four years later.

<sup>2</sup> For purposes of these comments, Scripps Networks uses the term “satellite program network” to mean distributing advertiser-supported networks on analog or digital tiers, but excluding premium services for which subscribers generally pay a monthly charge.

invest in new programming and services that will strengthen and expand the brand the network has created.

Scripps Networks has followed this model over the last decade and has achieved great economic efficiencies that have benefited both its shareholders and consumers. After its success with HGTV and Food Network, Scripps Networks was able to leverage that success to develop two progeny networks, DIY and Fine Living, and thus contribute to the rich diversity of network choices, which has been the cornerstone of this nation's communications policy.

Government intervention in the fully functioning, competitive marketplace for the wholesale distribution of satellite program networks would be disastrous, would remove the efficiencies inherent in the current distribution model, and would put Scripps Networks' channels and programming investment at great risk. *À la carte* distribution – allowing subscribers to pick and choose those networks that they want on a fee-per-network basis – would wholly undermine new networks because they would be lost in the clutter of hundreds of established networks toward which subscribers would naturally gravitate if given the choice of paying on a channel-by-channel basis. It takes years to create awareness and build viewership for a network. Channel surfing by subscribers among all channels, including fledgling ones, leads to viewership, which allows new networks a chance to succeed. Thus, while *à la carte* might be well intended to give subscribers greater choice, it ultimately will reduce choice because it undoes the economic paradigm that makes innovation possible.

An *à la carte* world would force satellite program networks to increase marketing budgets substantially in order to try to win back at least some of the customers that previously viewed the channel on broad, diverse tiers of niche programming. At the

same time, they would lose license fees, paid by MVPDs for tiered distribution, and advertising revenues, which would shrivel due to the networks' radically lower subscriber reach. In turn, this would leave the satellite program networks little choice but to slash expenses in ways that make little business sense and that would diminish the subscribers' viewing experience.

It is hard to envision any "pro-consumer" outcome as a result of this downward spiral. Moreover, adopting *à la carte* programming could adversely impact current affiliate license agreements, and dramatically increase license fees to compensate for the loss of ad sale revenues. This would of course raise the program acquisition costs of MVPDs, who ultimately would pass these cost increases through to consumers.

Furthermore, Scripps Networks could not commit capital to invest in new networks and services in the uncertain and turbulent environment that *à la carte* pricing would create. Indeed, imposing the *à la carte* model on the market in the late 1990s, *after* the successful launch of HGTV and Food Network, Scripps Networks could not have committed the resources required to launch DIY and Fine Living. If the *à la carte* model were imposed today in any form, it would deprive Scripps Networks of the ability to invest significantly in new original programming for its 2004 season, to invest further in its emerging Video-On-Demand ("VOD") service, or to consider going forward with the launch of a new network to respond to the unserved needs of Hispanic viewers.

Scripps Networks would not suffer these impacts alone. Virtually every other satellite program network would meet this same fate, with predictable results – networks would no longer invest in new programming. Many would go out of business. Moreover, the magnificent diversity of programming choices that has developed over the last twenty-five years would regress to a state of homogenized programming content.

Given the devastating impact that an *à la carte* regime would have on the satellite program network industry, Scripps Networks respectfully submits that the Commission should conclude that an *à la carte* or theme-tiered model would neither lower cable rates nor promote consumer welfare, but indeed very likely would lead to the complete opposite result. In light of that probable effect, and the significant constitutional implications of government intervention in the satellite-programming marketplace, the Commission should report to Congress that it should not adopt an *à la carte* or themed-tier regime because it will not be economic and cannot be justified.

## **II. SCRIPPS NETWORKS PRODUCES DIVERSE PROGRAMMING**

### **A. Diverse Programming Is In the Public Interest**

Congress and the Commission have long sought to promote the availability of diverse television programming services and sources in the cable and satellite multi-channel industry. One of the primary purposes of Title VI of the Communications Act, when first enacted, was to “assure that cable communications provide *and are encouraged to provide* the widest possible diversity of information sources *and services* to the public.”<sup>3</sup> In enacting the Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”), which amended Title VI, Congress reiterated that its policy objective was to “. . . promote the availability to the public of a *diversity* of views and information through cable television and other video distribution media.”<sup>4</sup> In addition, Congress directed the Commission to adopt regulations in order to promote “the public interest . . . by increasing

---

<sup>3</sup> Cable Communications Policy Act of 1984, Pub. L. No. 98-459, 98 Stat. 2779, Section 601(4), codified at 47 U.S.C. § 521(4) (emphasis added).

<sup>4</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1463 (1992) (codified as note to 47 U.S.C. § 521) (emphasis added).

competition and *diversity* in the multichannel video programming market and the continuing development of communications technology.”<sup>5</sup>

Moreover, Congress and the Commission have expressly acknowledged, and sought to guard against, the potential chilling effect of regulation on the development of new programming services. For example, in 1992, when enacting the horizontal ownership limitations in Section 613, Congress directed the Commission not to impose “limitations which would impair the development of diverse and high quality programming.”<sup>6</sup> In 1994, the Commission recognized the unintended negative impact of its initial rate regulations on the development of diverse programming services.<sup>7</sup> Similarly, the Commission acknowledged the inhibiting effects of regulation on the development of diverse, high-quality programming when it expanded the exemption from closed captioning requirements for new program networks.<sup>8</sup>

The industry’s effort to increase the number and types of diverse programming services, and thereby consumer choice, has been extraordinarily successful. The past 25 years have been marked by a dramatic increase in the number of new satellite delivered

---

<sup>5</sup> 47 U.S.C. § 548(c)(1) (emphasis added); *see also* § 548(c)(4)(D). In 1996, Congress sought to promote program diversity in its rules governing Open Video Systems. *Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems)*, 11 FCC Rcd 20227 (1996) at ¶ 224 (citing Conference Report at 172, 177-78). The Commission itself has recognized that the 1992 Cable Act program access-exclusivity restrictions were intended to “promote diversity by providing incentives for cable operators to promote and carry a new and untested programming service.” *Cablevision Industries Corp. and Sci-Fi Channel*, 10 FCC Rcd 9786 (1995) at ¶¶ 27-29.

<sup>6</sup> 47 U.S.C. § 533(f)(2)(G).

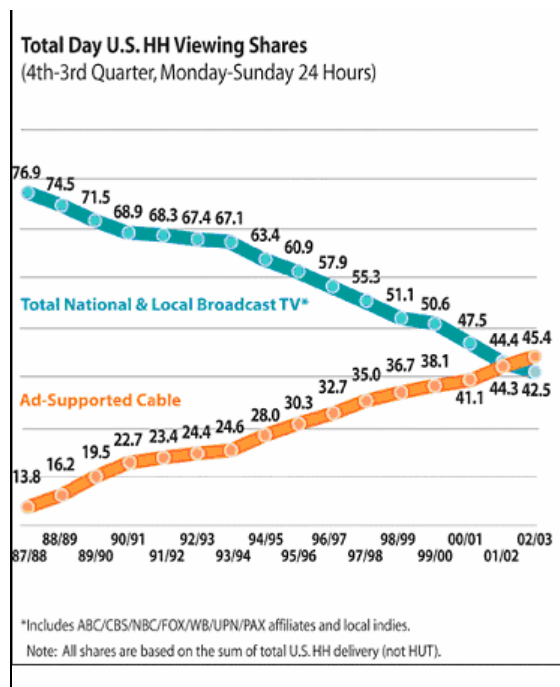
<sup>7</sup> *See Waiver Of The Commission’s Rules Regulating Rates For Cable Services*, 11 FCC Rcd 1179, 1185 (1995) (“the Commission is guided by the goal of reducing unnecessary burdens on cable operators and providing the cable operators incentives to innovate and promote program diversity in response to competition”); *Sixth Order On Reconsideration (Rate Regulation)*, 10 FCC Rcd 1226 (1994) at ¶ 22 (modifying the going-forward rules to ease the burden on establishing new networks).

<sup>8</sup> *Order on Reconsideration, Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, FCC 98-236, MM Docket No. 95-176 (rel. Oct. 2, 1998) (“*Closed Captioning Order on Recon.*”) at ¶ 54 (expanding exemption “to include numerous nascent networks that are continuing to experience growing difficulties”).



program networks.<sup>9</sup> These networks deliver incredibly varied programming of superior quality to the viewing public, and provide a level of in-depth coverage of niche subject areas formerly underserved or unserved. The traditional broadcast television medium *cannot* serve these viewing segments in a feasible manner.

Indeed, the ratings bear this out. The broadcast networks have been experiencing a steep decline in their ratings. At the same time, satellite program networks have shown a corresponding and steady increase in ratings. Improved ratings offer further proof that viewers increasingly are attracted to the unparalleled quality and diversity of cable programming, as the following chart illustrates:<sup>10</sup>



Source: Cabletelevision Advertising Bureau

<sup>9</sup> Recent data reveals that there are now over 418 national and regional program networks competing for carriage, approximately 339 of which are national, satellite program networks. National Cable Television Association, *Cable Television Developments* (2004) (“Cable Developments”) at 1, 207-42. At least 131 planned programming services are in the wings, preparing to launch. *Id.* at 247-72.

<sup>10</sup> Cabletelevision Advertising Bureau, *The Big Erosion Picture: Ad-Supported Cable vs. All Broadcast*. Available at: [http://www.onetvworld.org/?module=displaystory&story\\_id=789&format=html](http://www.onetvworld.org/?module=displaystory&story_id=789&format=html).

## **B. Scripps Networks Offers High Quality, Diverse Programming**

### **1. Overview Of The E.W. Scripps Company**

Scripps Networks is one of the family of companies owned by E.W. Scripps, a diversified media concern that has been a leader in the information age with its newspapers, wire services, broadcast television stations, cable networks, publishing and interactive media. Founded in 1878, E.W. Scripps launched the Penny Press in Cleveland, Ohio, to pioneer an information revolution that shaped the development of mass media in America for many years. Today, nearly 1.4 million Americans read 21 daily E.W. Scripps newspapers, making the company the ninth largest newspaper publisher in the country.

The company emerged as a broadcast pioneer in the 1930s, launching some of the earliest radio and television stations. Currently, a company subsidiary, Scripps Howard Broadcasting Company (“SHBC”), operates fifteen television stations in some of the nation’s largest metropolitan areas. Nine of SHBC’s television stations serve nearly ten million American households as local affiliates of the NBC and ABC television networks. In addition, SHBC has one independent station and recently acquired five stations distributing the Shop At Home Network™ serving an additional 5 million American households.

### **2. Scripps Networks**

Scripps Networks, a subsidiary of SHBC, is the preeminent video content producer of lifestyle programming. Scripps Networks’ family of networks includes HGTV, Food Network, DIY, and Fine Living.

HGTV and Food Network launched, respectively, in 1994 and 1993. As these networks expanded their distribution footprint, and became cash flow positive, the

company gained efficiencies through the tiered-distribution model that enabled it to leverage popularity of HGTV and Food Network to launch two “progeny” networks. Scripps Networks launched DIY in the fourth quarter of 1999 and Fine Living in the first quarter of 2002. The extension of the Scripps Networks brand has been an integral part of the company’s growth strategy. Since 1993, Scripps Networks has invested ***well over a half billion dollars*** in the creation of its four networks, the development of unique content, and its successful distribution system.

**Home & Garden Television™** presents some of America's best homebuilders, decorators, gardeners, and craft experts who provide practical information to help people make the most of their lives at home. HGTV features creative ideas, helpful hints, and how-to information on everything from building a porch and landscaping the yard, to redecorating the kitchen. HGTV launched in December 1994 and has been one of the nation's fastest-growing cable television networks. HGTV currently is distributed in more than 85 million households, is carried in all 50 states, is available to DBS and C-Band subscribers, and is distributed internationally. Supporting its satellite program network, HGTV’s website – [www.hgtv.com](http://www.hgtv.com) – is one of the leading online destinations for home and garden enthusiasts and receives nearly 3 million unique visitors each month.

**Food Network™** is a 24-hour satellite program network, which launched in 1993, that now reaches more than 84 million subscribers across the United States and has substantial international distribution. Food Network is a lifestyle network with programming that focuses on cooking, food preparation, healthy eating, at-home entertaining, and restaurants. Food Network explores new and interesting ways to approach food – through pop culture, adventure, and travel. The network’s companion

website – [www.foodnetwork.com](http://www.foodnetwork.com) – ranked number one among all food websites in the fourth quarter of last year with over 5.4 million visitors.

**Do It Yourself Network**<sup>TM</sup> is a simultaneous on-air, on-line network that provides immediate access to systematic instructions, in-depth demonstrations, and tips for the do-it-yourself home enthusiast. The multi-platform network merges television with an integrated website – [www.diynetwork.com](http://www.diynetwork.com) – to help viewers take projects from concept to completion. Launched in December 1999, the network now reaches 29 million subscribers in the United States, and has strong international distribution. DIY's popularity is reflected in its recent rapid growth, with the network's distribution growing by 100 percent in 2003.

**Fine Living**<sup>TM</sup> along with its companion website – [www.FineLiving.com](http://www.FineLiving.com) – is a trusted resource providing information and guidance on maximizing viewers' precious time and money. Launched in March 2002, the network's distribution reaches almost 23 million subscribers in the United States (including cable and DBS), as well as subscribers in a number of other countries.

### **3. Investment in New Products, Services, and Networks**

Programming networks must constantly invest in original programming and innovative services and technology in order to strengthen and extend their brands. Indeed, Scripps Networks has invested tens of millions of dollars in the development of its programming networks, in programming content, and in the development of innovative services. This kind of investment is vital for a network to compete and grow in today's marketplace. This investment is also made possible by the stability and efficiencies inherent in the tiered-distribution business model for satellite program networks. In 2003, for example, the company dedicated approximately \$41 million of its

segment profits toward program development. In 2004, the company expects to invest \$34-38 million toward program development.<sup>11</sup>

In addition, Scripps Networks has invested in becoming a leader in the VOD revolution. The company is tapping its archives of 15,000 hours of original programming from all four of its networks to fill the cable television industry's growing demand for quality VOD content.<sup>12</sup> The VOD content includes topical compilations, VOD original programming, regionally focused programs, and short-form programming. In addition to this content, Scripps Networks provides online companion resources for these programs on its networks' websites.

Scripps Networks is also exploring the development of a new Hispanic satellite program network that would feature culturally relevant content created around the home, garden, and food categories in a market segment not presently served by television or other media. The company already has produced some test programming and is working on its investment analysis.

In short, Scripps Networks' programs exemplify the type of content diversity that Congress mandated the Commission to promote.

### **III. DISTRIBUTION IS THE KEY TO THE SATELLITE PROGRAMMING NETWORK ECONOMIC MODEL**

#### **A. The Economics Of Satellite Program Networks**

The economic model that has supported the growth of satellite program networks is relatively straightforward. After conceiving a programming idea, a network must secure broad distribution to grow viewership. Expanding viewership propels advertising

---

<sup>11</sup> See E.W. Scripps Company Annual Report (2003). Available at: <http://www.scripps.com/2003annualreport/> ("2003 Annual Report").

<sup>12</sup> Scripps Networks' VOD programming ranks in the top five high-interest prospects among total adults. Beta Research, Cable Subscriber Study – Interest in Emerging Digital/Mid-Sized Networks, June 2003.

sales used to fund the creation of additional original programming. Strong viewership also enables networks to charge MVPDs with license fees, which bolsters investment in new programming.

This is what some refer to as the upward spiral of programming network growth. As discussed below, this is the model that Scripps Networks successfully followed with HGTV, Food Network, DIY and Fine Living.

### **1. The Dual Revenue Stream: Advertising And License Fees**

Success of a satellite program network hinges on two revenue streams: advertising and license fees. Distribution drives viewership and viewership in turn drives advertising revenues. In addition, increases in viewership make the network more attractive to new MVPD distributors who pay per subscriber license fees for carriage. This formula made Scripps Networks possible.

Wide distribution is also important because it enables a satellite program network to spread its capital and operating costs. The broader the base, the lower the per subscriber license fee charged to MVPDs, thereby reducing pressure on MVPDs to raise the prices charged to end users. Accordingly, it is imperative that a new network obtain placement, as much as possible, on MVPDs' most widely distributed tiers. Moreover, because of the ever-dwindling supply of analog and digital capacity on MVPD platforms,<sup>13</sup> there is an increasing demand by competing satellite program networks for this limited "shelf space." If the satellite program network does not have a large subscriber base over which to distribute its costs, its per subscriber license fees simply will not be competitive, making it more difficult, if not impossible, for the network to gain sufficient carriage to survive.

---

<sup>13</sup> Shirley Brady, *Attention New Networks!*, CABLEWORLD, June 21-July 4, 2004, at 21-22. Available at: [http://www.cableworld.com/cgi/cw/show\\_mag.cgi?pub=cw&mon=062104&file=attentionnewnetworks.htm](http://www.cableworld.com/cgi/cw/show_mag.cgi?pub=cw&mon=062104&file=attentionnewnetworks.htm)

## 2. Advertising Revenue Is Critical

During the early years of a network's existence, its expenses will far exceed incoming revenues. Consequently, a network must have sufficient operating capital to sustain early-year operating losses until it becomes profitable. It can take anywhere from three to eight years, or sometimes even longer, before the typical satellite program network operates in the black. The march toward profitability requires that a network achieve, as quickly as possible, a minimum level of distribution so that it will have enough viewership to be attractive to national advertisers.

As a matter of general industry practice, satellite program networks forecast advertising revenue under a rather uncomplicated mathematical formula: the product of the number of households in which a program is distributed multiplied by a program's rating equals the number of viewer "impressions." Then, these "impressions" are multiplied on a cost per thousand basis to arrive at a unit cost for a 30-second spot. Obviously, the greater the distribution, the higher the expected advertising revenue a satellite program network can achieve.

Advertising has been an important growth vehicle for satellite program networks. Between 1990 and 2002, cable networks experienced double-digit year-over-year increases in advertising revenues, from \$1.9 billion in 1990 to \$11.2 billion in 2002.<sup>14</sup> Last year, national advertising revenues on satellite program networks totaled \$12 billion.<sup>15</sup> Scripps Networks derives approximately 81 percent of its revenue from

---

<sup>14</sup> Kagan World Media, *Economics of Basic Cable Networks* 2003, at 69-70. *See also* Bortz Media & Sports Group, Inc., *Reinvesting In America: An Analysis of the Cable Industry's Impact on the U.S. Economy*, at 5, July 2003. Available at: <http://www.bortz.com/pub.html>.

<sup>15</sup> Cable Developments 2004, at 15.

advertising, although, on average, ad revenue typically represents about 50 percent of a network's total revenues.<sup>16</sup>

### **3. License Fee Revenues As A Second Source of Income**

Naturally, the better a satellite program network does in its advertising sales, the less pressure it faces to generate license fees paid by MVPDs. Nevertheless, an advertising-only model has not been a successful long-term strategy in the MVPD distribution market. Thus, the availability of a second revenue stream from affiliate license fees, typically paid on a per subscriber basis, is important to the long-term success of a satellite program network. As with advertising revenues, broader distribution will drive a network's license fee revenues upward.

#### **B. Scripps Networks' Current Business Operations**

Scripps Networks has used a similar strategy in developing each of its networks. Because of the heavy up-front investment, Scripps Networks' experience, as is standard in the industry, has been that its new networks have incurred operating losses until network distribution and audience size have grown to be sufficient to attract national advertisers. As distribution of each network has increased, Scripps Networks has been able to enhance the quality and variety of the network's programming and to increase the number of hours that it offers.

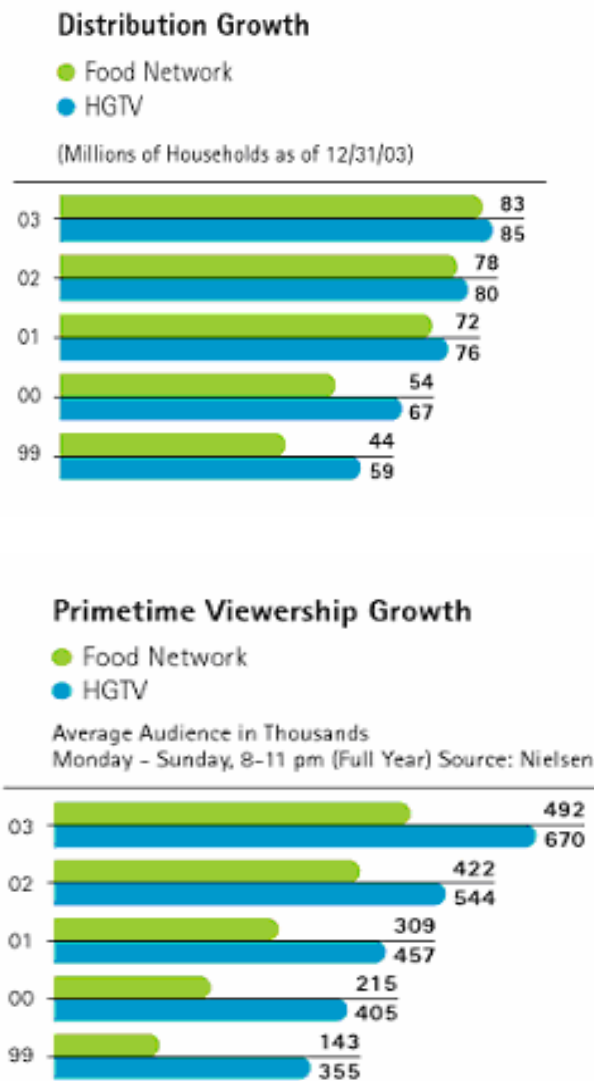
The successful development and launch of a new programming network is anything but guaranteed. Scripps Networks, however, has succeeded with tiered distribution by staying focused and executing its model of growing distribution and advertising revenues. This has resulted in year-over-year distribution and advertising

---

<sup>16</sup> The remaining revenues derive from the affiliate license fees, with generally insignificant amounts attributable to other sources such as merchandising. See discussion in Section III(A)(3) below. United States General Accounting Office, *Issues Related to Competition and Subscriber Rates in the Cable à la carte Television Industry*, 34-5 (October 2003) (emphasis added) ("GAO Report"). Available at: <http://www.gao.gov/new.items/d048.pdf>.



sales growth (*see* charts, below), which, in turn, has produced the requisite dual revenue streams and permitted the company to extend its brand through creation of progeny networks.



Source: E.W. Scripps 2003 Annual Report.

Unlike the 50/50 ratio of advertising to licensee fee revenues for many other satellite program networks, Scripps Networks' revenues especially weigh toward advertising. Indeed, in 2003, advertising sales on its four networks constituted

approximately 81 percent of the company's total revenue.<sup>17</sup> Its popular lifestyle brands, together with Scripps Networks' modest per subscriber license fees, allow it to compete strongly for increased distribution. Moreover, because MVPDs typically pass license fees through to their subscribers, Scripps Networks' lower fees mean lower retail rates for consumers.

#### **IV. GOVERNMENT INTERVENTION WOULD HARM NETWORKS AND CONSUMERS**

If *à la carte* distribution had been the starting point for the satellite program network industry twenty-five years ago, HGTV, Food Network, DIY and Fine Living, and virtually all other advertising supported satellite program networks, never would have been able to launch (and sustain) their operations, and consumers would be much worse off today. This is confirmed by industry history, which shows that niche networks that came out of the starting gates as *à la carte* services either failed or migrated to a tier-based distribution model.<sup>18</sup>

##### **A. À La Carte Would Hurt The Industry**

It is axiomatic that a loss of distribution would lead to loss of both license fee and advertising revenues. The only legitimate question is *by how much*, and *how fast*, those revenues would fall. While the precise amount of distribution loss would vary by circumstances unique to each network, it is likely that the revenue loss from both license fees and advertising generally would be at least linear to the distribution loss. In other

---

<sup>17</sup> 2003 Annual Report at ¶6. See note 11, *infra*.

<sup>18</sup> See, e.g., Linda Moss, "Viacom Plans a Gay-Themed Mini-Pay," MULTICHANNEL NEWS, Jan. 14, 2002 ("services that started out as mini-pays offered *à la carte* – such as [Golf] and Sundance Channel – had trouble building distribution under that model and migrated away from it. 'It's a pretty dicey proposition, just from an economic view,' the ex-cable operator said.").

words, if a network lost at least 90 percent of its distribution, it would lose at least 90 percent of both its license fee and advertising revenues.<sup>19</sup>

To counter this drop, a network would have to raise its per subscriber license fees.<sup>20</sup> This price hike would have to be significant because a niche advertiser supported network is unlikely to achieve significantly better than a 10 percent “take-rate”<sup>21</sup> from consumers in an *à la carte* world.<sup>22</sup> But even with a dramatic license fee increase, few, if any, networks could recover their subscription and advertising revenue losses because of the negative impact that such an increase would have on distribution, given that MVPDs no doubt would try to resist skyrocketing fees by refusing carriage.

Indeed, the low take-rates attendant to *à la carte* distribution could have a particularly dangerous effect on advertising revenues. As the General Accounting Office Report on cable competition issues noted:

To receive the maximum revenue possible from advertisers, cable networks strive to be on cable operators’ most widely distributed tiers. In other words, advertisers will pay more to place an advertisement on a network that will be viewed, or have the potential to be viewed, by the greatest number of people. According to cable network representatives we interviewed, ***any movement of networks from the most widely distributed tiers to an à la carte format could result in a reduced amount that advertisers are willing to pay for advertising time*** because there would be a reduction in the number of viewers available to watch the network.<sup>23</sup>

A satellite program network simply would not be able to make up the revenue loss caused by an *à la carte* or themed-tier requirement.

---

<sup>19</sup> See R.L. Katz, K. Manglis, G. Radeff, Bear Stearns, Equity Research, *A La Smart?* (2004) (“*A La Smart?*”).

<sup>20</sup> As one Wall Street analyst noted, “Loss of distribution is made up through higher affiliate fee payments, with a linear relationship between lost subscribers and higher affiliate fees.” *Id.*

<sup>21</sup> The term “take rate” refers to the percentage of potential MVPD customers that actually select the *à la carte* service.

<sup>22</sup> *Id.* By way of comparison, the premium services, such as HBO and Showtime, which provide high value “blockbuster” programming of mass appeal, have achieved only approximately 30 percent take rates after operating for decades. *Id.*

<sup>23</sup> See GAO Report at 35.

In addition, the move to an *á la carte* model would be enormously disruptive to the process that national advertisers have used for decades to buy advertising time. For example, the wide distribution that satellite program networks have been able to obtain on analog and digital tiers in the current marketplace provides a stable base from which the national rating services can rate networks' programming services. Media buyers and advertisers usually purchase their spots well in advance of airing of the program during which those spots will appear.<sup>24</sup> In an *á la carte* world, where there would be no meaningful predictability regarding the reach, ratings or number of impressions that a network would be able to deliver, the traditional means of pricing television ad buys would be reduced to chaos. Given the significantly lower penetration of *á la carte* satellite program networks, and the disruption to traditional buying patterns, the foreseeable consequence of an *á la carte* mandate or themed-tier distribution requirement would be that many national advertisers would migrate their advertising dollars to more predictable and stable media.

Concurrently with the precipitous decline in revenues, an *á la carte* distribution mandate would impose substantial new costs on both MVPDs and satellite program networks. MVPDs would have to rebuild their back-office systems to take in, process and bill channel-by-channel orders. Satellite program network's would face dramatically more difficult and expensive marketing challenges since distribution growth would be built subscriber-by-subscriber instead of system-by-system or MVPD-by-MVPD. Finally, both MVPDs and satellite program networks would have to absorb the increased costs of churn that would be inevitable in an *á la carte* environment. The head-on

---

<sup>24</sup> Typically, the satellite program network will guarantee the ratings of the programs in which the advertiser is placing spots based on the network's prior results and future growth prospects. If Nielsen Research later reports that the guaranteed number of impressions in the ad buy was not achieved, then the network will provide "make goods" in the form of either a refund or the provision of additional ad spots.

collision of declining revenues with increasing expenses would eliminate the efficiencies that exist in the current tiered distribution model and adversely impact the ability of networks to invest in new programming, strengthen and build their brands and launch new services.

**B. Á La Carte Would Hurt Consumers**

The basic assumptions underlying proposals of *á la carte* or themed-tier distribution models is that, *theoretically*, consumer prices will fall and consumer choice will increase. In truth, both assumptions are wrong.

First, as we have already seen, an *á la carte* or themed-tier requirement would precipitate an increase in license fees to make up for the resultant loss in subscription and advertising revenues. Given the magnitude of this anticipated drop, and the linear relationship between the decrease in subscribers and a network's loss of revenues, license fee increases would likely be very substantial. These higher per subscriber monthly license fees would increase the MVPDs' programming costs – costs that the MVPDs generally must pass on to their customers.<sup>25</sup> Thus, on a per-channel basis, consumers would be paying more for less choice if they opted to purchase just a few programming networks on an *á la carte* basis.<sup>26</sup> Indeed, as the GAO found, “[b]ecause increased license fees . . . are likely to be passed on to subscribers, it appears that subscribers’ monthly cable bills would not necessarily decline under an *a la carte* system.”<sup>27</sup>

---

<sup>25</sup> Increasing license fees, while a necessity of survival in an *á la carte* environment, would place the satellite program network in a Catch-22. While license fees will rise substantially, basic economic theories of elasticity of demand predict that the higher the price, the fewer the number of subscribers that will subscribe to the service, thus preventing the network from recapturing lost revenues. On the other hand, while keeping the price low may increase *á la carte* subscribership, it will never produce enough additional subscriber revenue to offset the lost advertising revenues caused by an *á la carte* or themed-tier requirement.

<sup>26</sup> “With *á la carte* you may not pay for what you don’t watch, but you may pay the same amount for less choice.” *A La Smart*.

<sup>27</sup> See GAO Report at 36.

Second, MVPD consumers find the purchase of packages of programming both convenient and enjoyable. The tier of multiple programming options allows the consumer to view their favorite programs and channels *and* to satisfy their natural curiosity to explore the channel line-up. The phenomenon of “channel surfing” is now a very real part of the modern viewing experience, something that consumers find to be very valuable.<sup>28</sup>

Third, consumers’ prior experience with non-premium *à la carte* channels has proven that they end up paying more for a channel on an *à la carte* basis than they would when it is part of a larger bundle, or tier, of services. For example, when Disney Channel originally launched, it was not a basic service, but rather was offered as an *à la carte* premium service for between \$8-13 per month.<sup>29</sup> Because it was unable to obtain sufficient distribution as a stand-alone *à la carte* pay service, it migrated to expanded basic tiers and the prices dropped significantly to about \$1-2 dollars per month.<sup>30</sup>

The Golf Channel also launched as an *à la carte* service in 1995. By 1996, it was teetering on the edge of bankruptcy because its subscription revenues at low take-rates could not cover its costs.<sup>31</sup> The network then abandoned its *à la carte* model, transferred into expanded basic tiers, obtained wider distribution, and ultimately has become one of the most successful tiered programming services with about 60 million subscribers.

---

<sup>28</sup> For example, 63 percent of analog tier and 65 percent of digital tier customers use channel surfing as the most used source to *find out* what is on television. Moreover, nearly 50 percent of cable customers rely on channel surfing to *decide* what to watch. See Cable Television Administration & Marketing Society, Video Consumer Research Study (Sept. 2002).

<sup>29</sup> *The Pitfalls of A La Carte: Fewer Choices, Less Diversity, Higher Prices*, NCTA Policy Paper May 2004 at 12 (“NCTA White Paper”).

<sup>30</sup> *Id.*, citing *Examination of Cable Rates: Hearing before the Subcommittee on Communications of the Senate Committee on Commerce*, 105<sup>th</sup> Cong. 38 (1998) (statement of Mr. Leo J. Hindery, President, Tele-Communications, Inc.) (“The addition of Disney to the widely subscribed to regulated tier added less than a dollar to the prices of the tier. As an *à la carte* service, with much smaller subscribership, Disney cost about \$10.”)

<sup>31</sup> NCTA White Paper at 9-10.

History's lesson regarding *à la carte* is clear: "Government efforts to dictate how our programming is packaged or marketed would be bad for consumers because it would give them less choice and less diversity in programming, and it would increase the price they would pay for this inferior set of offerings."<sup>32</sup>

**C. An *À La Carte* Model Would Eliminate Program Diversity**

Over the past 25 years, the development of advertiser supported satellite program networks and their distribution on broad MVPD programming tiers has revolutionized television viewing. This revolution would come to an end if the government were to intervene in the marketplace. The first casualty would be the current diversity of programming choices.

*À la carte* would hit independent networks especially hard. As the GAO stated in its report, "programming diversity would suffer under an *à la carte* system because some cable networks, especially small and independent networks, would not be able to gain enough subscribers to support the network."<sup>33</sup> Cable operators, programmers and financial analysts informed the GAO that "fewer networks would remain financially viable and new networks would be less likely to be developed."<sup>34</sup> In addition, these study participants reported to the GAO that it is likely "that smaller networks or those providing *specialty* programming would be hurt the most by an *à la carte* system."<sup>35</sup> Not even smaller networks such as DIY and Fine Living, with corporate parents like E.W. Scripps, would survive the harsh commercial consequence of reduced distribution.

---

<sup>32</sup> See Open Letter to Congress From Concerned Women Programming Executives (dated May 5, 2004), signed by 20 executives, including Susan Packard, President of Scripps Networks Affiliate Sales and International Development, and Brooke Johnson, President of the Food Network.

<sup>33</sup> GAO Report at 36.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

In addition, the move to *á la carte* would jeopardize further investment in unique niche programming designed to reach specialized audiences. Last year, for example, cable networks invested \$10.4 billion in original programming for their networks. Over the next seven years, these networks expect to invest an additional \$111 billion to create new programming, services, and networks.<sup>36</sup>

Scripps Networks, like other networks, simply would not be able to continue to invest in new programming without the distribution certainty that the current market provides. In addition to investing in fewer new series programs or specials, the company might have to halt its consideration of developing a Hispanic network. Without the ability to offset the distribution and advertising revenue losses brought on by *á la carte*, Scripps Networks would be left with few options, none of them good.<sup>37</sup>

## V. CONCLUSION

E.W. Scripps' motto for generations has been, "Give light, and people will find their way." Scripps Networks has provided detailed comments to the Commission in response to the *Á La Carte* Notice to illustrate how and why a regulatory driven *á la carte* or thematic tier model for distribution of networks such as HGTV, Food Network, DIY, and Fine Living would have disastrous consequences for both networks and consumers. Inevitably, *á la carte* distribution of otherwise widely distributed, advertiser supported satellite program networks would lead to increased consumer costs and less programming diversity. For these reasons, Scripps Networks respectfully requests that the Commission report to Congress that there is no legal, economic or regulatory basis for government intervention

---

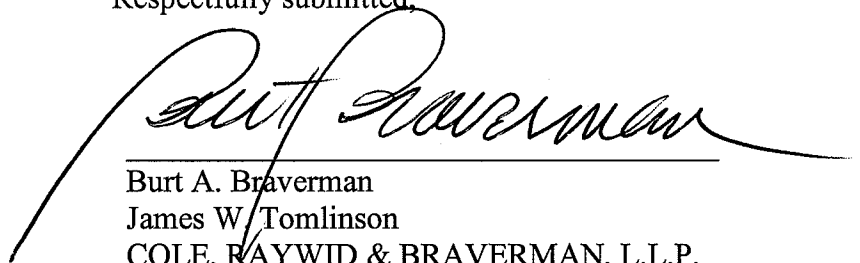
<sup>36</sup> Cable Television Advertising Bureau, *Cable Networks Will Continue To Invest Heavily In Quality Programming*. Available at: [http://www.onetvworld.org/?module=displaystory&story\\_id=783&format=html](http://www.onetvworld.org/?module=displaystory&story_id=783&format=html)

<sup>37</sup> According to the GAO Report, in the event of an *á la carte* requirement, "some cable networks, especially small and independent networks, would not be able to gain enough subscribers to support the network." GAO Report at 36.



in the fully functioning and competitive market for satellite program network distribution to MVPDs.

Respectfully submitted,



Burt A. Braverman  
James W. Tomlinson  
COLE, RAYWID & BRAVERMAN, L.L.P.  
1919 Pennsylvania Avenue, N.W. - Suite 200  
Washington, D.C. 20006  
(202) 659-9750

*Of Counsel:*

Robert J. Gerrard, Jr.  
Erik Hestnes  
David JB Arroyo  
**SCRIPPS NETWORKS, INC.**  
1180 Avenue of the Americas  
New York, New York 10036  
(212) 549-8581

Jeremy H. Stern  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
2381 Rosecrans Avenue - Suite 110  
El Segundo, CA 90245  
(310) 643-7999

July 15, 2004

*Attorneys for  
Scripps Networks, Inc.*

## **CERTIFICATE OF SERVICE**

I, Debra Holland, Secretary of Cole, Raywid & Braverman, L.L.P., do hereby certify that on this 15th day of July, 2004, true and correct copies of Comments of Scripps Networks, Inc. have been sent as follows:

1. By electronic filing with the Federal Communications Commission via the internet at <http://www.fcc.gov/e-file/ecfs.html>.

2. By messenger on the 16<sup>th</sup> day of July, 2004 to the following:

Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Kathleen Q. Abernathy  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Jonathan S. Adelstein  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Michael J. Copps  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Kevin J. Martin  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Ben Golant  
Federal Communications Commission  
Suite 4A-803, Media Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Matthew Brill  
Senior Legal Advisor  
Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Jon Cody  
Legal Advisor  
FCC Chairman Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Kenneth Ferree  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Jordan Goldstein  
Senior Legal Advisor  
Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Daniel Gonzalez  
Senior Legal Advisor  
Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Barry Ohlson  
Senior Legal Advisor  
Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Sheryl J. Wilkerson  
Legal Advisor  
FCC Chairman Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Christopher Libertelli  
Senior Legal Advisor  
FCC Chairman Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Bryan Tramont  
Chief of Staff  
FCC Chairman Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554



Debra Holland, Secretary